18 T.C. 754 (1952)

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Property located in a country at war with the United States is deemed destroyed or seized for tax purposes on the date war is declared, and a subsequent physical destruction of the property does not create a separate deductible casualty loss unless the property was recovered prior to its destruction.

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Summary

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The Kenmores sought to deduct a casualty loss for their Vienna home destroyed by fire in 1945. The Tax Court held that the loss was sustained in 1941 when the U.S. declared war on Germany, which controlled Austria, under Section 127(a)(2) of the Internal Revenue Code. The court reasoned that the declaration of war "deemed" the property lost at that time. The petitioners argued that they maintained possession and control of the property until the fire, but the court found this unpersuasive. The court also determined that the petitioners failed to prove they had recovered the property after the 1941 "deemed" loss but before its destruction in 1945, which would have allowed for a new basis for calculating gain or loss.

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Facts

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The Kenmores, formerly residents of Vienna, Austria, purchased a residence there in 1929, with title in Helene Kenmore's name. They left Vienna in 1938 due to German occupation, placing the property under the management of Franz Schiller. The United States declared war on Germany on December 11, 1941. Their Vienna residence was destroyed by fire in April 1945. The Kenmores claimed a casualty loss of $33,000 on their 1945 tax return, representing the value of the house and furnishings. The Commissioner of Internal Revenue disallowed the deduction.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in the Kenmores' 1945 income tax. The Kenmores petitioned the Tax Court for a redetermination of the deficiency, contesting the disallowance of the casualty loss deduction. The Tax Court ruled in favor of the Commissioner.

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Issue(s)

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Whether the Kenmores sustained a deductible casualty loss in 1945 when their Vienna residence was destroyed by fire, or whether the loss was sustained in 1941 when the United States declared war on Germany.

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Holding

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No, because under Section 127(a)(2) of the Internal Revenue Code, the property was deemed lost when war was declared in 1941. Unless the property was recovered before the fire, it had no basis for gain or loss purposes in 1945. The petitioners failed to prove such recovery.

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Court's Reasoning

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The court relied on the established principle that a war loss under Section 127 occurs when war is declared, regardless of physical destruction. The court cited *Ezra Shahmoon, 13 T.C. 705*, affd. *185 F.2d 384*, and *Abraham Albert Andriesse, 12 T.C. 907*, to support the holding that a loss occurs for income tax purposes in 1941. Congress anticipated the possibility of recovering property deemed lost, providing in subsection (c)(1) that "Upon the recovery ... of property ... considered under subsection (a) as destroyed or seized in any prior taxable year, the amount of such recovery shall be included in gross income." The court stated that for there to be a recovery within the meaning of the statute, "there should be the occurrence of some act of repossession, or the obtaining again of actual control." The court found the

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petitioners’ evidence of possession or control through their agent, Schiller, unconvincing, noting inconsistencies in the testimony. The court emphasized that deductions are matters of legislative grace, and the taxpayer must establish the facts necessary to show that their claim is within the statute.

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Practical Implications

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This case clarifies the tax treatment of property losses in war-torn countries. It confirms that the date of war declaration, not the date of physical destruction, triggers the

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